

AMENDED IN SENATE MARCH 28, 2003

SENATE BILL

No. 599

Introduced by Senator Perata

February 20, 2003

An act to add Section 851.90 to, and to add Chapter 2.6 (commencing with Section 1000.9) to Title 6 of Part 2 of, the Penal Code, relating to drug diversion.

LEGISLATIVE COUNSEL'S DIGEST

SB 599, as amended, Perata. Drug diversion: sealed records.

Existing law authorizes the sealing of certain records in connection with the dismissal of charges, as specified.

This bill would provide that whenever a person is diverted pursuant to a drug diversion program administered by a superior court, regardless of whether the program is statutorily established, and the person successfully completes the program, and it appears to the judge presiding at the hearing where the diverted charges are dismissed that the interests of justice would be served by sealing the arrest record of the diverted person, the judge may order the records in the case be sealed, as specified.

Existing law provides for various diversion programs relative to controlled substances offenses.

~~This bill would express the intent of the Legislature to enact legislation that would seal the arrest records of persons who successfully complete a diversion program and have had the controlled substances offenses dismissed.~~

This bill would authorize the creation of a pretrial diversion program and the diversion of persons who are charged with specified drug offenses to a preguilty drug court program, or to a nonstatutory

diversion program, as specified, and would, upon successful completion of the program, authorize dismissal of the charges and the sealing of the defendant's records, as specified.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. It is the intent of the Legislature to enact~~

SECTION 1. Section 851.90 is added to the Penal Code, to read:

851.90. (a) Whenever a person is diverted pursuant to a drug diversion program administered by a superior court, regardless of whether the program is statutorily established, and the person successfully completes the program, and it appears to the judge presiding at the hearing where the diverted charges are dismissed that the interests of justice would be served by sealing the arrest record of the diverted person, the judge may order the records in the case be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case, or upon the court's own motion, and with notice to all parties in the case. If the order is made, the court shall give a copy of the order to the defendant and inform the defendant that he or she may thereafter state that he or she was not arrested for the charge.

SEC. 2. Chapter 2.6 (commencing with Section 1000.9) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 2.6. DIVISION FOR SELECTED DRUG OFFENSES

1000.9. The presiding judge of the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender, may agree in writing to establish and conduct a preguilty plea drug court program pursuant to this chapter, or to divert defendants to a nonstatutory diversion program, regarding persons accused of violating any of Sections 11351, 11351.5, 11352, 11359, 11360, 11378, or 11379 of the Health and Safety Code, and wherein criminal proceedings are suspended without a plea of guilty for designated defendants.

1000.10. (a) The drug court program or nonstatutory diversion program shall include a regime of graduated sanctions

1 and rewards, individual and group therapy, urine analysis testing
2 commensurate with treatment needs, close court monitoring and
3 supervision of progress, educational or vocational counseling as
4 appropriate, and any other requirements agreed to by the presiding
5 judge or his or her designee, the district attorney, and the public
6 defender.

7 (b) If there is no agreement in writing for a preguilty plea court
8 program or nonstatutory program by the presiding judge or his or
9 her designee, the district attorney, and the public defender, the
10 court program shall be operated as a deferred entry of judgement
11 program as those programs are provided for in Chapter 2.5
12 (commencing with Section 1000) of Title 6.

13 (c) Satisfactory and unsatisfactory performance in a program
14 shall apply to preguilty plea programs and nonstatutory diversion
15 programs, and shall be determined pursuant to the provisions of
16 Sections 1000.3 and 1000.4. If the court finds the defendant
17 unsuitable for the preguilty plea program or the nonstatutory
18 diversion program, the court shall reinstate the criminal charge or
19 charges. If the defendant has performed satisfactorily during the
20 period of the preguilty plea program or the diversion program, at
21 the end of the period, the criminal charge or charges shall be
22 dismissed and the provisions of Section 851.90 shall apply.

23 ~~legislation to provide that whenever a person is diverted pursuant~~
24 ~~to a controlled substances diversion program, and successfully~~
25 ~~completes the program, and it appears to the court that dismisses~~
26 ~~the charges resulting in diversion that the interests of justice would~~
27 ~~be served by sealing the arrest record of the person who was~~
28 ~~diverted, the court may order that the records in that case be sealed,~~
29 ~~including any record of arrest or detention, upon the oral or written~~
30 ~~motion of any party to the case, or upon the court's own motion,~~
31 ~~and with notice to all parties. It is also the intent of the legislature~~
32 ~~to enact legislation that would provide that if the order is made, the~~
33 ~~court would give the defendant a copy of the order and inform the~~
34 ~~defendant that he or she may thereafter state that he or she was not~~
35 ~~arrested for that charge.~~